

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Applicants:</b>	Martin <i>et al.</i>	<b>Conf. No.:</b>	8788
<b>Serial No.:</b>	09/916,792	<b>Art Unit:</b>	2142
<b>Filing Date:</b>	07/27/2001	<b>Examiner:</b>	Blair, Douglas B.
<b>Title:</b>	REGULATING ACCESS TO A SCARCE RESOURCE	<b>Docket No.:</b>	GB920010043US1 (IBMR-0128)

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a *prima facie* case of obviousness based on an error in facts. Claims 1-40 are pending in this application.

Turning to the rejection, in the final Office Action, claims 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, 39 and 40 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Tonouchi (U.S. Patent Pub. No. 2002/0004833), hereafter “Tonouchi.” Claims 2-3, 6, 19-20 and 23 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Tonouchi in view of Webb *et al.* (U.S. Patent Pub. No. 2002/0083342), hereafter “Webb.” Claims 4, 12-13, 16, 21, 29-30, 33 and 36 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Tonouchi in view of Bondarenko *et al.* (U.S. Patent No. 6,389,028),

hereafter “Bondarenko.” Claims 8-9 and 25-26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Tonouchi in view of Slotznick (U.S. Patent No. 6,011,537), hereafter “Slotznick.” Applicants submit that these rejections are clearly not proper and are without basis because at least one claim limitation is not met by the cited reference or references. For example, as argued in the May 22, 2006, Request for Reconsideration, Tonouchi fails to teach or suggest each and every element of independent claim 1. In particular, Tonouchi fails to disclose responsive to determining that said access level is currently at a desired maximum, automatically allocating to an access slot, which specifies a time period during which the scarce resource may be accessed, said requester. See Request for Reconsideration, pages 15-16. Instead, Tonouchi merely teaches that a user makes a reservation request for a selected time period; the system then determines the number of current reservations that the user has; the system then determines whether the number of current reservations is equal to the number that the user is allowed to have; and then the user’s reservation is recorded if the user has additional reservations remaining. Paras 136-141. To this extent, Tonouchi records the user’s selected reservation if the user has additional allowed reservation slots and does not allocate the user to a time period. As such, the time period of Tonouchi is neither chosen after the determination is made as to whether the user already has the maximum number of reservations nor automatically allocated.

As further argued in the May 22, 2006, Request for Reconsideration, Tonouchi fails to teach or suggest teach determining, upon receipt of the request, whether the access level for said scarce resource is currently at a desired maximum. Request for Reconsideration, page 17-18. Instead, the determination of Tonouchi is determines the status of access to the resource in the future. The fact that the user has been routed to the contract server presupposes that the user did not have a reservation for the current time period and was therefore not able to access the server.

To this extent, all requests for access and / or determinations of possibility of access are not current but future.

With respect to the rejections of independent claims 18 and 35, Applicants note that each claim includes a feature similar in scope to the automatically sending step of claim 1. Further, the Office relies on the same arguments and interpretations of Tonouchi as discussed above with respect to claim 1. To this extent, Applicants herein incorporate the arguments presented above with respect to claim 1, and respectfully request withdrawal of the rejections of these claims for the above-stated reasons.

Furthermore, as argued in the Request for Reconsideration with respect to independent claims 36 and 39 and dependent claims 11, 15, 17, 28, 32 and 34, Tonouchi fails to teach or suggest responsive to determining that said access level is currently at a desired maximum, determining whether said scarce resource is able to accommodate immediate access by said late requester. Request for Reconsideration, pages 19-20. The Office does not dispute the fact that Tonouchi makes no special provision to give immediate access to a user that has exceeded its time period. Instead, the Office argues that the claimed invention has no difference in procedure between regular access and late access. In the response to this argument contained in Applicants' Request for Reconsideration, an example is provided in which the differences between procedures regarding regular and late users of the claimed invention are illustrated. Page 20. Applicants also detail illustrative claim language that provides these distinctions. These illustrations and arguments show that the late requestor of the claimed invention may be granted immediate access even when the access level of the scarce resource is at the desired maximum even when a regular user would not. This is in contrast to Tonouchi in which all scenarios use the same process. Thus, the determining step for a late request as included in the

claimed invention is not taught by the reservation of a time period in Tonouchi. Accordingly, the Office has failed to state a *prima facie* case of anticipation, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With regard to the Office's other arguments regarding claims that depend from the claims referred to herein, the dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

Applicants respectfully submit that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,



---

Date: June 20, 2006

Hunter E. Webb  
Reg. No.: 54,593

Hoffman, Warnick & D'Alessandro LLC  
Three E-Comm Square  
Albany, New York 12207  
(518) 449-0044  
(518) 449-0047 (fax)